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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 N. 5TH STREET  
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: )  
)  
Midwest Laboratories, Inc. )  
13611 B Street )  
Omaha, Nebraska 68144 )  
)  
RCRA I.D. No. NED981126824 )  
)  
Respondent. )  
)  
Proceeding under Section 3008(a) and (g) of )  
the Resource Conservation and Recovery )  
Act as amended, 42 U.S.C. § 6928(a) and (g) )  
)

**CONSENT AGREEMENT  
AND FINAL ORDER**

Docket No. RCRA-07-2008-0008

**I. PRELIMINARY STATEMENT**

The United States Environmental Protection Agency (EPA), Region VII (Complainant) and Midwest Laboratories, Inc. (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2). This Consent Agreement and Final Order is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this Consent Agreement and Final Order.

**II. ALLEGATIONS**

**Jurisdiction**

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 United States Code (U.S.C.) § 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent violated regulations found at Title 128, Chapter 9 of the Nebraska Administrative Code Regulations (hereinafter "128 Neb. Admin. Code"), and Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations at 40 C.F.R. Part 262.

### **Parties**

3. The Complainant is the Chief of the RCRA Enforcement and State Programs Branch in the Air and Waste Management Division of EPA, Region VII.

4. The Respondent is Midwest Laboratories, Inc. (Respondent), a domestic corporation formed under the laws of Nebraska.

### **Statutory and Regulatory Framework**

5. The State of Nebraska has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Nebraska has adopted by reference the federal regulations cited herein at pertinent parts of the Nebraska Administrative Code, Title 128 – Rules and Regulations Governing Hazardous Waste Management. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Nebraska has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

6. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004. Based upon the facts alleged in this CAFO and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA in June 2003, the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in this CAFO.

**Factual Background**

7. Respondent is a Nebraska corporation authorized to conduct business in the State of Nebraska and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

8. Respondent, located at 13611 B Street, Omaha, Nebraska, 68144, is a private analytical laboratory for solid and liquid samples. Respondent employs approximately 85 full time employees at its Omaha facility.

9. On or about February 26, 1991, Respondent notified the Nebraska Department of Environmental Quality that it is a small quantity generator of hazardous waste. EPA small quantity generators generate between 100 and 1,000 kilograms of hazardous waste per month.

10. Respondent has been assigned the following EPA ID Number: NED981126824.

11. On March 20, 2007, EPA conducted a compliance evaluation inspection at Respondent's facility. Based on information obtained during the March 2007 inspection, Respondent was issued a Notice of Violation for Operating as a Treatment, Storage, or Disposal Facility (TSDF) without a permit for the storage of hazardous waste for greater than 180 days and for failing to meet generator requirements.

**Violations**

**COUNT 1**

**OPERATION OF A HAZARDOUS WASTE FACILITY WITHOUT  
A RCRA PERMIT OR INTERIM STATUS**

12. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 11 above, as if fully set forth herein.

13. Respondent, as a small quantity generator of hazardous waste, may accumulate hazardous waste in containers on-site for one hundred and eighty (180) days without a permit or without having interim status, provided that certain conditions are met. Those conditions are listed in 40 C.F.R. § 262.34(d), as incorporated in 128 Neb. Admin. Code, ch. 9, 007.03.

14. At the time of the March 2007 inspection, Respondent was not complying with the following regulatory requirements:

**Illegal Storage of Hazardous Waste**

15. The regulations at 40 C.F.R. 262.34(d) and 128 Neb. Admin. Code, ch. 9, 007.03 state

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that a small quantity generator of hazardous waste, may accumulate hazardous waste in containers on-site for one hundred and eighty (180) days without a permit or without having interim status, provided that certain conditions are met.

16. At the time of the March 2007 inspection, the inspector observed the following: (1) a fifty-five (55) gallon hazardous waste container of solid spill absorbents chromium liquid (D007) that the Respondent had generated and was storing in the main hazardous waste storage area (HWSA) of the facility. This fifty-five (55) gallon hazardous waste container of solid spill absorbents chromium liquid was stored for approximately 1,130 days, (2) a fifty-five (55) gallon hazardous waste container of mercury contaminated waste (D009) that the Respondent had generated and was storing in the main hazardous waste storage area (HWSA) of the facility. This fifty-five (55) gallon hazardous waste container of mercury contaminated waste was stored for approximately 431 days, (3) a fifty-five (55) gallon hazardous waste container of mercury waste (D009) that the Respondent had generated and was storing in the main hazardous waste storage area (HWSA) of the facility. This fifty-five (55) gallon hazardous waste container of mercury waste was stored for approximately 431 days.

17 Respondent does not have a RCRA Permit or Interim Status to operate as a storage facility and it is therefore in violation of Section 3005 of RCRA, 42 U.S.C. § 6925 and the Nebraska Revised Statutes §§ 81-1505 (13).

18. Respondent's storage of hazardous waste for more than 180 days is a violation of 40 C.F.R. 262.34(d) and 128 Neb. Admin. Code, ch. 9, 007.03.

#### **Failure to Meet Generator Requirements**

##### ***Failure to Close A Storage Container***

19. The regulations at 40 C.F.R. § 262.34(d)(2) referencing 40 C.F.R. § 265.173(a), and 128 Neb. Admin. Code, ch. 9, 007.03C referencing 128 Neb. Admin. Code, ch. 10, 004.01A2 require that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

20. At the time of the March 2007 inspection, Respondent failed to close a hazardous waste storage container of solid spill absorbents chromium liquid (D007) that the Respondent was storing in the main hazardous waste storage area (HWSA) of the facility.

21. Respondent's failure to close this hazardous waste storage container is a violation of 40 C.F.R. § 262.34(d)(2) referencing 40 C.F.R. § 265.173(a), and 128 Neb. Admin. Code, ch. 9, 007.03C referencing 128 Neb. Admin. Code, ch. 10, 004.01A2.

##### ***Failure to Close Satellite Accumulation Container***

22. The regulations at 40 C.F.R. § 262.34(c)(1)(i) and 128 Neb. Admin. Code, ch. 9,

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007.04A require that a generator comply with the requirement set forth at 40 C.F.R. § 265.173(a) and 128 Neb. Admin. Code, ch 10, 004.01A2, respectively. Pursuant to these regulations, a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

23. At the time of the March 2007 inspection, Respondent failed to close the following hazardous waste satellite accumulation containers: (1) two 4-liter hazardous waste satellite accumulation containers of spent solvent (D001, F002, F003, F005) in the Feed & Food Building, and (2) one 5-gallon hazardous waste satellite accumulation container of spent ethanol (F003/F005) in the environmental lab.

24. Respondent's failure to close these three satellite accumulation containers is a violation of 40 C.F.R. § 262.34(c)(1)(i) and 128 Neb. Admin. Code, ch. 9, 007.04A.

***Failure to Label Satellite Accumulation Containers with the Words "Hazardous Waste"***

25. The regulations at 40 C.F.R. § 262.34(c)(1)(ii) and 128 Neb. Admin. Code, ch. 9, 007.04A2 require that a generator mark containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

26. At the time of the March 2007 inspection, Respondent failed to label the following hazardous waste satellite accumulation containers with the words "Hazardous Waste" or with other words that identify the contents of the containers: (1) one 5-gallon satellite accumulation container of spent solvent (D001, F002, F003, F005) in the environmental lab, and (2) one 4-liter satellite accumulation container of spent ethanol (F003/F005) in the fertilizer lab.

27. Respondent's failure to label these two hazardous waste satellite accumulation containers with the words, "Hazardous Waste" or with other words that identify the contents of the container is a violation of 40 C.F.R. § 262.34(c)(1)(ii) and 128 Neb. Admin. Code, ch. 9, 007.04A2.

***Failure to Post Emergency Information***

28. The regulations at 40 C.F.R. § 262.34(d)(5)(ii) and 128 Neb. Admin. Code, ch. 9, 007.09 require that a generator post the following information by the telephone: (A) the name and telephone number of the emergency coordinator; (B) the location of fire extinguishers and spill control material, and if present, the fire alarm; and (C) the telephone number of the fire department, unless the facility has a direct alarm.

29. At the time of the March 2007 inspection, the name and telephone number of the emergency coordinator and the location of the fire extinguishers and spill control equipment were not posted next to the telephone.

30. Respondent's failure to post emergency information by the telephone is a violation of 40 C.F.R. § 262.34(d)(5)(ii) and 128 Neb. Admin. Code, ch. 9, 007.09.

### **III. CONSENT AGREEMENT**

31. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

32. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO set forth below.

33. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

34. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the CAFO.

35. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

36. This CAFO addresses all civil administrative claims for the RCRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

37. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

38. Respondent certifies that by signing this CAFO that to best of its knowledge, Respondent's facility is in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.* and all regulations promulgated thereunder.

39. The effect of settlement described in Paragraph 36 above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 38, above, of this CAFO.

40. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

41. Pursuant to Section 3008 of the Solid Waste Disposal Act, the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project (SEP),

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and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of Forty-Four Thousand Nine Hundred Ninety-Two Dollars (\$44,992.00).

42. The penalty specified in Paragraph 41, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

43. Respondent consents to the issuance of this CAFO and consents for the purposes of settlement to the payment of the civil penalty cited in paragraph 41, above, and to the performance of a SEP.

44. In response to the violations of RCRA alleged in this CAFO and in settlement of this matter, although not required by RCRA or any other federal, state, or local law, Respondent shall complete the SEP described in Paragraphs 45-56 of the CAFO, which the parties agree is intended to secure significant environmental or public health protection and improvement.

45. Respondent shall complete the following SEP: Respondent will validate the following methods;

- a. Neutral extractable pesticides (agricultural) or NEP screen
- b. Acid extractable pesticides (agricultural) or AEP screen
- c. Organophosphorus pesticides (for EPA use)
- d. Base/neutral Semivolatile organics by EPA 8270
- e. Total extractable hydrocarbons by EPA 8015
- f. Organochlorine pesticides by EPA 8081; and

Respondent shall purchase four 4790 extractors. These four 4790 extractors will be added to the existing Horizon 4790 Extractor System to expand the capability of this system (expanded capability). The validated methods described above will be run using the expanded capability of the Horizon system in order to reduce the use of hazardous materials in the Respondent's analytical testing. Reducing the Respondent's use of hazardous materials will ultimately reduce the amount of hazardous waste generated by the Respondent.

#### Step #1: Method Validation

46. Within six (6) months of the effective date of this CAFO, Respondent shall successfully validate the methods described above in Paragraph 45. Once validated, these methods will be run using the expanded capability of the Horizon system to further reduce the amount of hazardous material used in the Respondent's analytical testing.

47. Respondent shall expend a minimum of \$84,262.00 in approvable costs to validate the methods described in Paragraph 45. Approvable costs shall only include supplies/material and labor costs that are directly related to the validation of the above described methods.

48. Respondent will receive 2:1 SEP credit (\$42,131.00) for the method validation described above in Paragraph 45.

Step #2: 4790 Extractors

49. Within six (6) months of the effective date of this CAFO, Respondent shall purchase four 4790 extractors. These four 4790 extractors will be added to the existing Horizon 4790 Extractor System process (Horizon System). The addition of the four 4790 extractors will improve the capability of the Horizon System. The Respondent will then run the validated methods, described above in Paragraph 45, using the Horizon Systems expanded capability to achieve a 75% reduction in the solvents used in the Respondent's analytical testing. The 75% reduction will be calculated based on the volume of solvent actually used compared to the theoretical volume of solvent which would have been used if the separatory funnel extraction method had been utilized.

50. Respondent shall expend a minimum of \$41,544.00 in approvable costs to purchase the four additional 4790 extractors described in Paragraph 49. Approvable costs shall only include purchase costs that are directly related to the purchase of the four additional 4790 extractors.

51. Respondent will receive a 1:1 SEP credit (\$41,544.00) for the purchase of the four 4790 extractors described above in Paragraph 49.

52. Respondent will receive a total SEP credit of \$83,675 for the approved completion and implementation of the SEP as described above in Paragraphs 46-50.

52. Within three (3) months of the effective date of this CAFO, Respondent shall submit an Interim SEP Report to EPA. The Interim SEP Report shall consist of:

a) Documentation showing that the Respondent has purchased and paid for the four 4790 extractors.

53. Within seven (7) months of the effective date of this CAFO, Respondent shall submit a Final SEP Report to EPA. The SEP Completion Report shall contain the following information:

a) A detailed description of the method validation and the 4790 extractor SEP, as implemented;

b) A description of any problems encountered in implementation of the project and the solution(s) thereto;

c) A description of the specific environmental and/or public health benefits resulting



from implementation of the method validation and the 4790 extractor SEP;

d) Itemized costs for the labor, materials/supplies, and implementation of the method validation and the 4790 extractors;

e) Documentation showing a 75% reduction in the use/generation of solvent waste used in the Respondent's analytical testing; and

f) Certification that the method validation and the 4790 extractor SEP has been fully implemented pursuant to the provisions of this CAFO.

54. In itemizing its costs in the Interim SEP Report and the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Cancelled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

55. The Interim SEP Report and the SEP Completion Report shall include the statement of Respondent, through an officer, signed and certifying under penalty of law the following:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

56. The Interim SEP Report and the SEP Completion Report shall be submitted on or before the due date to:

Deborah Finger, AWMD  
Environmental Protection Agency  
Region VII  
901 North 5th Street  
Kansas City, Kansas 66101.

57. Any public statement, oral or written, in print, film, internet, or other media, made by Respondent making reference to the SEP shall include the following language:

This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Resource Conservation and Recovery Act. 42 U.S.C. § 6901 *et. seq.*

58. Respondent hereby certifies that, as of the date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive credit in any other enforcement action for the SEP.

59. Respondent agrees not to claim any funds expended in the performance of the SEP as a deductible business expense for the purpose of federal, state, or local taxes.

60. Respondent agrees to the payment of stipulated penalties as follows:

a) In the event Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP as set forth in Paragraphs 45-50, above, and/or to the extent that the actual expenditures for the SEP does not equal or exceed the cost of the SEP described in Paragraph 47 and 50, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

i) Except as provided in subparagraph (ii) and (iii) immediately below, if the SEP is not completed satisfactorily and timely pursuant to the agreement set forth in Paragraphs 45-50, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of Eighty-Three Thousand Six Hundred Seventy-Five Dollars (\$83,675);

ii) If Respondent fails to timely and completely submit the Interim SEP Report or the SEP Completion Report required by Paragraphs 52-56, Respondent shall be liable for and shall pay a stipulated penalty in the amount of \$100.00 for each day after the due date until a complete report is submitted; and

iii) If the SEP is not completed in accordance with Paragraphs 45-56, but EPA determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

b) The determination of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

c) Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

d) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions set forth in Paragraph 2 of the Final Order portion of this CAFO, below.

61. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of Forty-Four Thousand Nine Hundred Ninety-Two Dollars (\$44,992.00) as set forth in Paragraph 1 of the Final Order portion of this CAFO, below.

62. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of debt collection including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. §§ 901.9(c) and (d).

63. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

64. This CAFO shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA, Region VII. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

65. This CAFO shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with Paragraph 11 of the Final Order, that all requirements hereunder have been satisfied.

#### **IV. FINAL ORDER**

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this CAFO, IT IS HEREBY ORDERED THAT:

**A. Payment of Civil Penalty**

1. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay a mitigated civil penalty of Forty-Four Thousand Nine Hundred Ninety-Two Dollars (\$44,992.00).

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

The Respondent shall reference the Docket Number, RCRA-07-2008-0008, and In the Matter of Midwest Laboratories Inc. on the check. A copy of the check shall also be mailed to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region VII  
901 N. 5th Street  
Kansas City, Kansas 66101

and

Jennifer Trotter  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII  
901 N. 5th Street  
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. Respondent shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete the project as specified in the Consent Agreement.

## **B. Parties Bound**

5. This Final Order portion of this CAFO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

## **C. Reservation of Rights**

6. Notwithstanding any other provision of this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Thirty-Two Thousand Five Hundred Dollars (\$32,500.00) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

7. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this CAFO.

8. Except as expressly provided herein, nothing in this CAFO shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

9. Notwithstanding any other provisions of the CAFO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

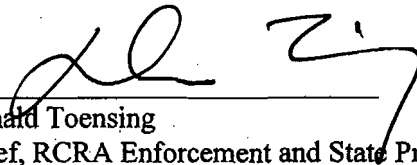
10. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

11. The provisions of this CAFO shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

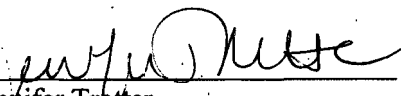
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**For the Complainant:**  
The United States Environmental Protection Agency

9-18-08  
Date

  
\_\_\_\_\_  
Donald Toensing  
Chief, RCRA Enforcement and State Programs Branch  
Air and Waste Management Division  
U.S. Environmental Protection Agency  
Region VII


9-18-08  
Date

  
\_\_\_\_\_  
Jennifer Trotter  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII

*In the matter of Midwest Laboratories, Inc.  
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**For Respondent:**  
Midwest Laboratories, Inc.

9/12/2008  
Date

  
Signature

Kennard E. Pohlman  
Printed Name

President, Midwest Laboratories, Inc.  
Title

*In the matter of Midwest Laboratories, Inc.*

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IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.

September 19, 2008  
Date

Robert Patrick  
Robert Patrick  
Regional Judicial Office



IN THE MATTER OF Midwest Laboratories, Inc., Respondent  
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to  
Attorney for Complainant:

Jennifer Trotter  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

John Gilroy  
Revolution Capital Partnership, LLC  
11840 Nicholas Street, Suite 200  
Omaha, Nebraska 68154-4475

Dated: 9/22/08

  
Kathy Robinson  
Hearing Clerk, Region 7